

1979 WL 42957 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 24, 1979

***1 SUBJECT: Banks and Banking; Credit; Loans; Uniform Consumer Protection Code**

A supervised lender may not reassess a previously imposed delinquency charge as a deferral charge at the time a loan is refinanced.

Everette H. Whitler
Director
Consumer Finance Division
Board of Financial Institutions

QUESTION PRESENTED:

Whether a supervised lender may in conjunction with the refinancing of an existing loan redesignate delinquent payments as deferred payments of reassess previously imposed delinquency charges as deferral charges?

CITATION OF AUTHORITIES:

Section 72-301, et seq., South Carolina Code of Laws (1976).

DISCUSSION:

The following fact situation is considered:

A supervised lender subject to the South Carolina Consumer Protection Code Section 57-1-101, et seq., Code of Laws of South Carolina (1976) (hereinafter CPC) makes a loan to a consumer borrower. The loan is to be repaid in monthly installments. The borrower makes several of the required monthly payments but then fails to make three or four subsequent payments. For each of these missed payments, the lender imposes a delinquency charge pursuant to [Section 37-3-203\(2\) the Code](#). Thereafter, the lender determines that the borrower must refinance the loan. At that point, the lender redesigns the missed payments as deferred to the time of refinancing. The earlier imposed delinquency charges are refunded and a deferral charge is imposed upon the missed payments pursuant to [Section 37-3-204 of the Code](#).

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Reference to the definition of 'deferral period' in Section 37-2-204(1)(c) points to the conclusion that there has been in reality no deferral of payments. Section 37-2-204(1)(c) provides that 'deferral period' means 'a period in which no installment is scheduled to be paid by reason of a deferral'. In the present case, there was no period in which the missed payment was not due. It was due continuously up until the end of the loan period, i.e., the time of refinancing. Therefore, rather than being a deferral of payments, the lender is merely reassessing the delinquency charge, a procedure prohibited under Section 37-2-203(2).

CONCLUSION:

A supervised lender may not in conjunction with the refinancing of an existing loan redesignate delinquent payments as deferred payments and reassess the delinquency charges as deferral charges.

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